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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, 30th May, 1957*

**S.R.O. 1915.**—In pursuance of the provisions of Sub-section (1) of section 86 of the Representation of the People Act, 1951, the Election Commission hereby publishes a copy of the Election Petition No. 244 of 1957, presented to the Commission on the 24th April, 1957, under section 81 of the said Act, by Shri Kamal Basu of 13/1A, Baloram Ghosh Street, Calcutta-4, calling in question the election to the House of the People of the State of West Bengal from the Diamond Harbour constituency of that House of Shri Purnendu Sekhar Naskar, of 72, Bellaghata Main Road, Calcutta-10.

Received by Express Delivery this the twenty fourth day of April one thousand nine hundred and fiftyseven.

Sd./- DIN DAYAL, 24-4-57.

Under Secretary,

Election Commission, India.

BEFORE THE ELECTION COMMISSION, NEW DELHI

E.P. No. 244 OF 1957

In the Matter of an Election Petition under Section 81 of the Representation of the People Act., XLIII of 1951.

AND

In the Matter of the last General Election from the Double Member Diamond Harbour Parliamentary Constituency in the State of West Bengal

AND

In the Matter of—

Kamal Basu of 13/1A Baloram Ghose Street, Calcutta 4. A candidate—  
*Petitioner.*

( 1899 )

*Versus*

1. Purnendu Sekhar Naskar of 72 Beliaghata Main Road, Calcutta-10.
2. Kansari Haldar of Village Andaria, P. O. Sarisa, Dist. 24 Pergunnahs—Returned Candidates.
3. Nalini Kanta Haldar of Baidyapur, P. O. Ghateswar, Dist. 24 Pergunnahs—

*Respondents*

AND

In the Matter of a petition calling in question the election to the House of the People of Respondent No. 1 Purnendu Sekhar Naskar and for declarations that the election of the said Respondent No. 1 is void and that the petitioner himself has been duly elected, to the General seat.

The humble petition on behalf of the petitioner Kamal Basu abovenamed, most respectfully Sheweth:—

1. The petitioner and all the Respondents abovenamed were contesting candidates for election to the House of the People from the Diamond Harbour Parliamentary Constituency at the last General Election held in March 1957.

2. The said Constituency of Diamond Harbour is a Double Member Constituency, required to fill in two seats in the House of the People, one of which was a "reserved seat", this is, reserved for the members of the Scheduled Castes while the other was the "General Seat".

3. The petitioner and Respondent No. 3 Nalini Kanta Haldar, do not belong to any of the scheduled castes but the Respondents Nos. 1 and 2 are members of Scheduled Castes in the State of West Bengal, and they declared in their respective Nomination Papers the particular scheduled caste to which each of them belonged.

4. Each of the Respondents Nos. 1 and 2 who are members of Scheduled Castes deposited or caused to be deposited one sum of Rs. 250 (Rupees two hundred and fifty) only each for the several nomination papers filed by each of them for election as required by Section 34 of the Representation of the People Act, 1951, while the petitioner and Respondent No. 3 deposited Rs. 500 each.

5. The petitioner stood for the said election as a nominee of the Communist Party of India, for the "General Seat", the returned candidate, Kansari Haldar, Respondent No. 2 was also a nominee of the Communist Party of India for the "Reserved Seat" while Respondents Nos. 1 and 3 Purnendu Sekhar Naskar and Nalini Kanta Haldar were nominees of the Indian National Congress, for the "Reserved Seat" and the "General Seat" respectively.

6. Respondents Nos. 1 and 2 contested the election for the "reserved seat".

7. The different dates of poll for the aforesaid Parliamentary election were also the dates for election of members for the State Assembly and the different centres for recording votes for the Parliamentary election were the same as those for the State Assembly election. Such dates and centres, as notified, were as below:—

4th March 1957—Mahestola, Bishnupore, Baruipore.	} Assembly. Sectors.
7th March 1957—Kakdwip, Kulpi, Diamond Harbour, Palta.	
10th March 1957—Mathurapore, Magrahat	
14th March 1957—Budge Budge.	

8. After the poll, counting of votes was made on 24th, 25th and 26th March 1957, at Alipore Criminal Court by Shri A. K. Mazumdar Assistant Returning Officer, who found on completion of counting that the valid votes received by each of the contesting candidates were as below:—

1. Kansari Haldar.....	2,47,785 votes
2. Purnendu Sekhar Naskar.....	2,45,266 votes
3. Kamal Basu.....	2,44,763 votes
4. Nalini Kanta Haldar.....	2,36,192 votes

9. At the counting, 28,251 votes actually caste were treated as invalid votes by the said Assistant Returning Officer, and all such votes were excluded from counting in spite of objection to the contrary on behalf of the petitioner in regard to a large number of them. The said rejection is contrary to law and has materially affected the result of the election, in so far as the election of the Respondent No. 1 is concerned.

10. At the end of Counting as above, the Assistant Returning Officer declared the Scheduled Caste Candidate, Respondent No. 2 Kansari Haldar, duly elected to the "Reserved Seat" and Respondent No. 1 Purnendu Sekhar Naskar, another scheduled caste candidate, elected to the "General Seat".

11. The petitioner contends that the declaration of the result of the election in favour of the said Respondent No. 1, Purnendu Sekhar Naskar, a Scheduled Caste candidate, who deposited one sum of Rs. 250 only for the several nomination papers filed by him for election to the "reserved seat" and was not a candidate for, not qualified to be chosen for the "general seat" is void, illegal and contrary to law and that the petitioner, Kamal Basu, who secured the highest number of votes among the non-scheduled caste candidates and was qualified to fill in the "General Seat", should have been declared elected to the "General Seat".

12. The petitioner further contends that the provisions of the Representation of the People Act 1951, relating to the special privilege for the Scheduled castes or scheduled Tribes members particularly those contained in Sections 54 and 55 thereof are contrary to the principle as stated in Article 14 of the Constitution of India for it is discriminatory and therefore bad.

13. The process of Counting was not conducted in accordance with law, and serious mistakes, various irregularities, non-compliance with and infringements of relevant acts and Rules were committed by the authorities concerned. The same has materially affected the result of the election in so far as the Respondent No. 1, Purnendu Sekhar Naskar is concerned; and had a recount been held as demanded by the petitioner and/or his counting agent, they would have been declared elected.

14. The counting as made was erroneous and not in conformity with the provisions of law bearing on it. Upon accurate and correct counting after verification of the ballot paper account of different polling stations, it will be found that the petitioner in fact obtained a majority of valid votes over those obtained by Respondent No. 1 Purnendu Sekhar Naskar. The petitioner through his election agent demanded a recount but was refused by the Assistant Returning Officer.

15. The arrangements for counting were so made as to prevent any proper checking of the ballot boxes or of ballot papers by the petitioner's counting agents and ascertainment of the correctness of the work being carried on by the different counters. Counting tables numbering about 250 were placed so closely together as not to let pass anybody between them with the result that in some cases the ballot papers for one candidate were wrapped up in the check slips for another candidate and further it was impossible to find out whether the rejection of such large number of votes, as stated above, was correctly done.

16. The petitioner lodged his protest with the Assistant Returning Officer against the said arrangements for counting but without any effect whatsoever.

17. The Assistant Returning Officer acted illegally and without jurisdiction in holding the counting on a date which was three days earlier than previously announced; the same has materially affected the counting in as much as the petitioner was unable at such short notice, to arrange for attendance of sufficient number of counting agents on his behalf, to check and supervise the counting and to detect mistakes, defects and wrong rejections of ballot papers.

18. The election complained of has not been a free election by reason of the various corrupt practices, such as undue influence, committed by the returned candidate, Purnendu Sekhar Naskar and/or his election agents and/or other agent and/or his workers, supporters, canvassers, with the consent of and in connivance with the said returned candidate or his election agent, particulars of which are given in the Annexure "A" appended hereto.

19. Various irregularities and non-compliance with law were committed before or in course of the poll by the authorities concerned. They may be detailed as below:—

(a) In Booths Nos. 163/14 and 160/81, the ballot boxes of the Respondents No. 1 Purnendu Sekhar Naskar, had on it printed labels which bore the symbol allotted

ted to him, i.e., a pair of bullocks with yoke on, not his name but the name of Nalini Haldar, Respondent No. 3 whose symbol was the same (except that in the case of respondent No. 1 the same symbol was inscribed in a black circle) in consequence the electors were misled and cast their votes in utter confusion, some taking the symbol as the guide while others relied on the name as such. A large number of votes which would have gone normally to Nalini Kanta Haldar Respondent No. 3 were recorded in favour of Purnendu Sekhar Naskar, Respondent No. 1.

(b) In booth No. 164/56 the ballot box of your petitioner had on it printed label which bore the symbol allotted to him i.e., ears of corn and sickle, not his name but the name of Kansari Haldar Respondent No. 2 whose symbol was the same with the addition of black circle round the symbol.

(c) In Booth No. 156/27 of Maheshtala Assembly Sector, a ballot box of the petitioner was found unsealed and unlocked. A written complaint was made to the Returning Officer but the Assistant Returning Officer passed an order on the same stating that he was satisfied that the ballot box was not tampered with without making any enquiry whatsoever whether the box was actually meddled with. The election at the said booth should be declared void.

(d) In Booth No. 158/94 of Bishnupur Assembly Sector, ballot papers prescribed for the State Assembly election were found to be used in the ballot box for election to the House of the People, quite illegally and without any authority. The same has adversely affected the election in so far as the Respondent No. 1 is concerned.

(e) Re. the Bishnupur Sector, the Assistant Returning Officer contrary to usual procedure, did not announce the result of counting booth by booth in respect of about 10 booths. In the absence of total number of votes polled by the petitioner in each booth, it was impossible to ascertain the correctness either of the results of the booth or of the sector or of the final total.

(f) Re. Mathurapore Sector comprising about 174 booths, the Assistant Returning Officer, contrary to usual procedure, did not announce the total result of the said Sector, without which it was impossible to verify the accuracy of the counting and to reach a correct total of the votes obtained respectively by the candidates.

(g) At the counting, officers deputed to count the petitioner's votes at a particular table or tables, having finished counting of the petitioner's ballot papers for a booth or sector, went over to the adjacent table allotted to officers counting the votes of Respondent No. 1 Purnendu Sekhar Naskar, in order to assist the latter. The former Officers carried with them to the other table or tables the bundles of ballot papers for the petitioner without the check slips on them, and without adopting any other measure to avoid mixing up of the petitioner's ballot papers with those of the Respondent No. 1 Purnendu Sekhar Naskar.

20. It may be stated that the petitioner does not claim any relief against the other returned candidate, Kansari Haldar, Respondent No. 2 nor does he claim to set aside the entire election.

21. The petitioner, therefore, prays that the election Commission would be pleased to constitute an Election Tribunal and refer this petition to it for trial, according to law.

22. Your petitioner has deposited a sum of Rs. 1000 with the Reserve Bank of India in favour of the Secretary to the Election Commission as a security deposit of his petition and a Reserve Bank receipt for the said deposit is annexed hereto and/or enclosed herewith.

23. The petitioner, therefore challenges the election of the Respondent No. 1 Purnendu Sekhar Naskar, on the above grounds and prays for a recount and the following reliefs:—

(a) That the election of Respondent No. 1 Purnendu Sekhar Naskar be set aside and declared void and/or that the petitioner be declared to have been duly elected. In the alternative the election of the said Respondent No. 1 Purnendu Sekhar Naskar be declared void. In the further alternative, recount be ordered as stated in paragraphs 13 and/or 14 and your petitioner be declared elected,

(b) That such further or other orders be passed as to the Tribunal seem fit and proper.

(c) That the petitioner is not challenging the election of Respondent No. 2 Kansari Halidar.

(d) That costs of and incidental to this petition be paid by Respondent No. 1.

#### *Verification*

I, Kamal Kumar Basu, petitioner abovenamed state that the statement of facts made in paragraphs 1—3, 10, 16, 17, 19(g) 20 and 22 of this petition are all true to my knowledge, those in paragraphs 14 (last sentence) 18, 19(a) to (f) are all true to my information which I believe to be true and the rest are my submissions.

I sign this verification at 6 Old Post Office Street, Calcutta at 3 P.M. this 23rd day of April 1957.

Signed in my presence.

(Sd.) ARJUN GHOSH,

Solicitor, Calcutta.

(Sd.) KAMAL BASU,

23rd April, 1951, 3 P.M.

#### *ANNEXURE "A"*

#### *Particulars of Corrupt Practices Alleged*

##### *Under Influences:*

1. On 10th March, 1957, at Bamna, in Union No. 12, at the Bamna F. P. School centre, a Congress Supporter beat one of the petitioner's volunteers, Panchu Gopal Mondal by name at about 3-10 P.M. As a result of this aggressive act, there followed a tussle. Some voters tried to prevent it but they themselves became victims of the Congress Goodaism. A voter, Shri Sashi Bhusan Gayen by name was beaten and he received a cut on his forehead. This enraged the common people. To escape their wrath, the congressites, numbering about one hundred,—armed themselves with lathis and spears. The people who originally tried to prevent any scuffle had therefore, to take up lathis. It resulted in indiscriminate hurling of brickbats. In the primary stage, the polling officers and the two policemen present tried to prevent any breach of peace. But they were powerless, so they closed the doors and kept themselves and the women voters shut up while the fight was raging outside. At about 3-20 P.M. polling was completely stopped. The polling was resumed only at 4-50 P.M. after some additional police force arrived on the spot. People of the village were panicky and feared to come out. They were threatened by the Congress supporters.

2. At the Bilaspore F. P. School centre in Union No. 13 during the polling—the supporters of Respondent No. 1 were so blatantly outrageous that they carried on canvassing within the prohibited area throughout the day and the two policemen, in fact, out of fear, did not even try to prevent them. The trouble occurred when the petitioner's agent, Ahed Ali Fequir of Mahitala, challenged one Kachimuddin (of the same village) who came to cast a vote in a false name. There ensued a wordy duel in course of which petitioner's agent, Ahed Ali, complained of a large-scale false voting in this centre. Jare Alam alias Janu, and Khalil Faquir dealt him a blow on the left eye within the enclosed space. The petitioner's agent escaped by quickly-getting inside the booth. But the supporters of Respondent No. 1 demanded his blood. The petitioner's election agent, Sri Kalidas Mitra, sought the help of the police and only a re-inforcement from the police station could rescue the petitioner's agent and avert a major disaster. The temper of goon-daim was so high that Ahed Ali had to leave immediately for Calcutta for fear of life.

3. On the date of poll at the Nazra-Rozarhat F. P. School centre at about 3 P.M. the petitioner's volunteer, Amulya Cayan, complained against canvassing within the enclosed space by a large number of Supporters and Workers of Respondent No. 1 Purnendu Sekhar Naskar. The presiding officer came out and

wanted to know who the men were. The said canvassers within the prohibited area, along with some others, regardless of the presiding officer's mediation seized Amulya Gayan by the neck and tried to beat him. The petitioner's worker, Sri Sailen Ghosh, who was present there immediately put Amulya Gayan in the jeep and tried to pacify the aggressive people. But when the heat was mounting, Sri Ghosh asked the driver of the jeep to give the start to void any untoward incident. Then followed stone-throwing at the jeep. One large piece of brick hit Sri Ghosh on the neck. Fortunately the brick first struck an iron rod of the jeep which diminished the intensity of the blow and caused the injury to Sri Ghosh to be mild. But for the obstruction, the case would have been grave. The petrol-can was taken away from the jeep which was, of course, recovered one hour later. However, the virulence of the attack created a stampede. The petitioner's volunteers had to leave the place to evade the fury and the petitioner's supporters feared to come to the booth after 3 P.M. The women voters especially were terribly frightened. The incident, therefore, caused grave damage to the polling on our side since that time (from 3 P.M. to 5 P.M.).

4. On the polling day at the Usthi H. E. School centre in Union No. 9, at the instigation of Abdul Shaikh and of Mr. Noor Mohammed Baddi-member Union Board both supporters and workers of Respondent No. 1 physically assaulted the petitioner's volunteer Sanatan Bag, Mr. Baddi threatened that more blows would be dealt

5. At the Madhya Krishnapore F. P. School in Union No. 9 the petitioner's Agent—Atar Rahaman of Barijore, challenged the last man, Sohrab Mistry who came to cast votes in false name of Jane Alam Mistry on the polling day. The presiding officer detained Sohrab Mistry for some time and then set him free. When the ballot boxes were being sealed inside, some supporters, agents, Canvassers and other officers of Respondent No. 1, Purnendu Sekhar Naskar were threatening to beat the petitioner's agent. When the petitioner's said agent came out, one Sohrab Mistry a supporter of Respondent No. 1 called him names and dealt him a blow.

6. In the Radhanagar F. P. School centre, Md. Daud Ali Naskar, the petitioner's agent challenged a false voter. As a result the supporter and agents of Respondent No. 1, namely, Md. Giasuddin Khan, Md. Amanat Khan, Md. Sher Ali Khan, Md. Irpan Gazi suddenly threatened to beat petitioner's agent Daud Ali, as soon as he would come home. Daud Ali had to leave the area for fear of life. Daud Ali's elder brother Md. Abed Ali Naskar has already been beaten by the same person. All this happened on the day of poll.

7. In the Utter Kusum Junior High School, the petitioner's volunteer, Anwar Ali of Tekpanza was beaten by Barhanuddin and Abdus Sattar on the day of poll, by the supporters and agents of Respondent No. 1, Purnendu Sekhar Naskar.

8. For a few days before the day of poll, at Bamna, within Union No. 12, all the workers, canvassers and supporters of the petitioner, particularly Golam Saifi and Abdul Wahab, were threatened with physical violence or other direct consequences if they continued to work for the petitioner. Such threats were exercised on behalf of the Respondent No. 1, Purnendu Sekhar Naskar by his workers and/or Agents, Muhamed Mukuddar Rahman Molla, Abdur Rahim, Raisuddin Molla and others, who are influential people of the locality. They also threatened the voters of the place in general and warned them against voting for the petitioner. By reason of such threats and warning, the voters were demoralised and some voters abstained from voting, while one of the petitioner's workers had to leave the place for safety. In spite of the said threats and warnings, the petitioner's workers and agents tried to carry on their work as best as they could; as at the risk of their limbs or lives. After the polling, the said workers and/or Agents of the Respondent No. 1, with the help of other villagers, held "Court-trials" of the petitioner's workers and agents and upon finding them guilty of having committed "offences", beat the petitioner's workers. Golam Saifi, Abdul Wahab and others, with shoes, each ten times.

9. The petitioner made a complaint in writing to the District Magistrate, 24 Parganas in regard to the above incidents in detail praying for prompt action.

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*Verification*

I, Kamal Kumar Basu, petitioner, abovenamed, state that the statements of facts made in paragraph 9 are true to my knowledge and those contained in paragraphs 1 to 8 are based on informations which I believe to be true.

I sign this verification to-day at 6, Old Post Office Street, Calcutta at 3 P.M. in the presence of Sri Arjun Ghose, Solicitor.

Singed in my presence.

(Sd.) ARJUN GHOSE,

Solicitor, Calcutta.

DATED: 28rd April, 1957.

TIME: 3 P.M.

Dated this 23rd April, 1957.

(Sd.) KAMAL BASU,

Communication if any, may be addressed to Sri Kamal Kumar Basu, 13/1A, Balaram Ghose Street, Calcutta-4.

[No. 82/244/57.]

By order,

DIN DAYAL, Under Secy,

